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SEP 26 2006

OFFICE OF PETITIONS

In re Application of
Tsiounis et al.
Application No. 09/780,031
Filed: February 9, 2001
Attorney Docket No. 4915-2

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed June 20, 2006, and in the alternative, a petition under 37 CFR 1.137(b) to revive the above-identified application.

This application became abandoned for failure to reply timely to the nonfinal Office Action mailed December 23, 2004, which set a three (3) month shortened statutory period to reply. Accordingly, this application became abandoned on March 24, 2005.

PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

Petitioners stated that the USPTO PAIR system confirmed that the nonfinal Office Action was returned to the USPTO on January 14, 2005. Petitioners suggested that the nonfinal Office Action was sent to the incorrect address of 1561 Laurel Street, instead of 751 Laurel Street, the correspondence street address for Smyrski & Livesay (the firm responsible for prosecution of the application at the time of the mailing of the nonfinal Office Action) in application 20040088473, published on May 6, 2004.

The showing of record is insufficient to warrant withdrawal of the holding of abandonment. A review of the record indicates that October 30, 2002, the Office received a Revocation and Appointment of New Attorney, requesting that all correspondence be directed to Paul Livesay, Esq., Smyrski & Livesay, 1561 Laurel Street, Suite D, San Carlos, CA 94070. The record further reveals that the nonfinal Office Action was correctly mailed to the requested the correspondence address of 1561 Laurel Street, Suite D, San Carlos, CA 94070. The Office notes that petitioner submitted a Declaration of Mr. Martin concerning the events surrounding the return of the nonfinal Office Action as undeliverable; however, petitioners did not submit any statements for Messrs. Livesay and Smyrski, the practitioners responsible for the prosecution of the patent at the time of the mailing of the nonfinal Office Action.

The record shows that the nonfinal Office Action was mailed to the correct correspondence address of record as it existed on December 23, 2004. Moreover, it appears that the Office Action was returned because petitioners did not promptly change the correspondence address of record with the USPTO. Accordingly, the petition to withdraw the holding of abandonment is **dismissed**.

PETITION UNDER 37 CFR 1.137(b)

The provisions of 37 CFR 1.137(b) provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must include payment of the issue fee or any outstanding balance. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.
- (2) The petition fee as set forth in 37 CFR 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and
- (4) Any terminal disclaimer (and fee set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

The present petition does not satisfy requirement (1) above.

This application became abandoned for failure to file a reply to the nonfinal Office action of December 23, 2004, within the period set for response. The proposed reply required for consideration of a petition to revive must be an amendment, request for reconsideration or the filing of a continuing application. Accordingly, the petition under 37 CFR 1.137(b) is **dismissed**.

Petitioners must submit an appropriate reply to the nonfinal Office action with any renewed petition. The practitioners may obtain a copy of the nonfinal Office Action by accessing the USPTO PAIR system at <http://www.uspto.gov/eac/index.html> or by contacting the Files Information Unit at 703-308-2733.

The \$1,500.00 petition fee will be charged to Deposit Account, as authorized.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." No additional petition fee is necessary.

Further correspondence with respect to this matter should be addressed as follows and to the attention of Senior Petitions Attorney Christina Tartera Donnell:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.



Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/780,031	02/09/2001	Yiannis S. Tsiounis	7932.0007-00

23117
NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203

CONFIRMATION NO. 8451



OC000000020588990

Date Mailed: 09/26/2006

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 06/20/2006.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

CHRISTINA T DONNELL
OP (571) 272-3211

ATTORNEY/APPLICANT COPY



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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09/780,031	02/09/2001	Yiannis S. Tsiounis	7932.0007-00

CONFIRMATION NO. 8451



Paul Livesay, Esq.
Smyrski & Livesay, LLP
1561 Laurel Street,
Suite D
San Carlos,, CA 94070

Date Mailed: 09/26/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 06/20/2006.

- The Power of Attorney to you in this application has been revoked by the assignee who has intervened as provided by 37 CFR 3.71. Future correspondence will be mailed to the new address of record(37 CFR 1.33).

*C. T. Donnell*

CHRISTINA T DONNELL
OP (571) 272-3211

NEW ATTORNEY/AGENT COPY